387092

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107-4431

NOV 14 1996

GENERAL NOTICE LETTER
URGENT LEGAL MATTER: PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Mr. Robert Holmes, CEO
Dynamic Services, Inc.
718 Beaumont Road
Fairless Hills, PA 19030

Re: Malvern TCE Superfund Site (Chemclene Corporation), 258 N. Phoenixville Pike, Chester County, Malvern, PA

Dear Mr. Holmes:

This letter notifies you that you[1] may incur, or may have incurred, liability under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a), with respect to the Malvern TCE Superfund Site ("the Site"). The Site is located at and adjacent to the Chemclene Corporation, Malvern, PA. This letter also notifies you of potential response activities at the Site, which you may be asked to perform or pay for at a later date if EPA performs them.

BACKGROUND

CERCLA, more commonly known as Superfund, was enacted in 1980, reauthorized and amended in 1986, and reauthorized again in 1990. CERCLA has several key objectives, including setting priorities for cleanup of the worst hazardous waste sites in the country, and determining the parties potentially responsible for investigating, cleaning up or paying the costs of cleaning up such hazardous sites. These parties are referred to as "potentially responsible parties" or "PRPs."

In September 1983 the United States Environmental Protection Agency ("EPA") included the Site on the National Priorities List ("NPL"), a list of the most serious uncontrolled or abandoned sites at which releases of hazardous substances have occurred or may occur. EPA has documented the release of various organic contaminants to the soil and groundwater at the Site and the drinking water supply of nearby residences has been impacted.

[1]For the purposes of this letter, the term "you" shall refer to either an individual, a company, a partnership, a sole proprietorship, or a corporation, whichever is applicable.

NOTICE OF YOUR POTENTIAL LIABILITY

Based on documents received from the Chemclene Corporation, EPA believes that you may be a PRP for this Site. These documents have been summarized in the "Draft Volumetric Ranking" list attached hereto as "Attachment 3." PRPs under CERCLA include: 1) current owners and operators of the Site; 2) owners and operators of the Site at the time hazardous substances were disposed; 3) persons who arranged for disposal or treatment of hazardous substances sent to the Site; and 4) persons who accepted hazardous substances for transport to the Site, and who selected the Site for disposal. These categories are set forth in Section 107 of CERCLA, 42 U.S.C. § 9607.

EPA has documented the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site, as those terms are defined in Sections 101(14) and 101(33) of CERCLA, 42 U.S.C. §§ 9601(14) and (33). EPA has spent public funds on actions to investigate and control such releases or threatened releases at the Site. Unless EPA reaches an agreement under which a PRP or PRPs will properly perform or finance such actions, EPA may perform these actions pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, or require them to be performed by responsible parties under Section 106 of CERCLA, 42 U.S.C. § 9606.

EPA may order one or more PRPs to perform response actions deemed necessary by EPA to protect the public health and welfare, or the environment. Additionally, PRPs may be liable for all costs incurred by the government in responding to any release or threatened release at the Site, under Sections 104 and 107(a) of CERCLA, 42 U.S.C. §§ 9604 and 9607(a), and the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6901 et seq., and other laws. Such actions and costs may include, but are not limited to, expenditures for conducting a Remedial Investigation/Feasibility Study ("RI/FS"), conducting a Remedial Design/Remedial Action ("RD/RA"), and other investigation, planning, response, oversight, and enforcement activities related to the Site. In addition, potentially responsible parties may be required to pay for damages for injury to, destruction of, or loss of natural resources, including the cost of assessing the amount or extent of such damages related to a site.

You should also be aware that once a site is placed on the NPL pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, it cannot be deleted until after an RI/FS has been completed and the necessary remedial action has been conducted in accordance with EPA guidance and the National Contingency Plan ("NCP"), published at 40 C.F.R. Part 300.

EPA has completed approximately 75% of the Remedial Investigation/Feasibility Study (RI/FS) for the Site. Once the RI/FS is completed, EPA will issue a Proposed Plan to the public for review and comment. The Proposed Plan will contain EPA's preferred alternative for remediation at the Site. There is a 30 day public comment period, which may be extended for cause shown, following which EPA will issue a Record of Decision ("ROD") delineating the remedy selected for the Site. A ROD is a decision document, signed by the Regional Administrator of EPA Region III, which sets forth the remedy that EPA or the PRPs will implement at the Site.

By this letter, EPA notifies you of your potential liability with regard to this matter and encourages you to perform or to finance voluntarily those response activities that EPA determines to be necessary at the Site.

SITE RESPONSE ACTIVITIES

In accordance with CERCLA and other authorities, EPA has already undertaken certain actions and incurred certain costs in response to conditions at the Site. EPA has conducted sampling of onsite soil and groundwater; and offsite sampling of residental wells. EPA is currently completing the RI/FS. The RI/FS includes the following activities:

Remedial Investigation (RI) - Further investigations to define the nature and extent of soil, ground and surface water contamination at the Site, identification of the hydrogeological characteristics and an assessment of the impact on the biotic receptors at the Site; and

Feasibility Study (FS) - A study to evaluate potential remedial alternatives with emphasis on risk reduction through actions that utilize treatment to permanently and significantly reduce the toxicity, mobility, or volume of hazardous substances, pollutants, or contaminants.

At present, EPA is planning to issue a Proposed Plan in the winter of 1996 and a ROD in the spring of 1997.

EPA may expend additional funds for response activities at the Site under the authority of CERCLA and other laws.

SPECIAL NOTICE AND NEGOTIATION MORATORIUM

EPA anticipates that you will receive an additional notice from EPA in the future concerning this Site. The following four paragraphs are a detailed description of that future notice. You do not need to take any specific action regarding this future notice at this time. The description is provided to you here so that you can anticipate and understand the process.

The future notice will inform you whether or not EPA will use the CERCLA Section 122(e) special notice procedure to formally negotiate terms of a consent order or consent decree to conduct or to finance Site response activities. If EPA elects not to use the Section 122(e) special notice procedure, the notice will specify why special notice was not considered appropriate in this case.

Under Section 122(e) of CERCLA, 42 U.S.C. § 9622, EPA has discretionary authority to use the special notice procedure if EPA determines that such procedure would facilitate an agreement between EPA and the PRPs and would expedite response action at the Site. Use of this special notice procedure triggers a moratorium on certain EPA activities at the Site. The purpose of the moratorium is to provide a period of time when PRPs and EPA may enter into formal negotiations for PRP conduct or financing of the response activities at the Site.

During the moratorium period, EPA will not initiate response activities with regard to the RD/RA. This RD/RA moratorium lasts for 60 days after the RD/RA special notice. If EPA determines that a good faith offer is submitted by the PRPs within those 60 days, the statute provides a 60-day extension for further negotiations.

If EPA determines that a good faith offer has not been submitted within the first 60 days of the moratorium period, EPA may terminate the moratorium period pursuant to Section 122(e)(4) of CERCLA. EPA then may commence response activities or

enforcement actions as it deems appropriate. In the absence of an agreement with the parties to perform or to finance the necessary response activities, EPA may undertake these activities and pursue civil litigation against the parties for reimbursement of Site expenditures. Alternatively, EPA may issue a unilateral administrative order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), to require PRPs to initiate response activities, and/or may commence civil litigation pursuant to Section 106(a) to obtain similar relief. Failure to comply with an administrative order issued pursuant to Section 106(a) of CERCLA may result in a fine of up to $25,000 per day, pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), and/or imposition of treble damages, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

The preceding explanation of special notice and the negotiation moratorium procedure is for your general information about the Superfund process. It does not require any specific action on your part at this time. (But see PRP Response and EPA Contact sections, below.)

INFORMATION TO ASSIST RESPONSIBLE PARTIES

EPA encourages good faith negotiations between the PRPs and EPA, as well as among the PRPs. Therefore, EPA is providing, as "Attachment 4" to this letter, a list of the names and addresses of PRPs to whom this notification is being sent or who have previously been notified. This list represents EPA's preliminary findings on the identities of the PRPs for this Site. Inclusion on, or exclusion from, the list does not constitute a final determination by EPA concerning the liability of any party for the release or threat of release of hazardous substances at or from the Site.

EPA is enclosing various documents to assist you with negotiations among the PRPs. Those documents are listed below. If any one or more of these documents is missing from this information package, kindly call (215) 928-7918 and leave a message as to which document is missing and the name and address where the copy may be sent. A copy will be sent to you as soon as possible.

The following documents, included with this letter, are either generally applicable to the Site, or specific to you as a PRP at the Site.

Attachment 1: Site fact sheets;

Attachment 2: Copies of Invoices pertaining to you or your company;

Attachment 3: Draft Volumetric Ranking Summary:[1]

Attachment 4: List of PRP names and addresses; and

Attachment 5: EPA guidance on De minimis settlements entitled Methodologies for Implementation of CERCLA Section 122(g)(1)(A) De Minimis Waste Contributor Settlements, December 20, 1989, OSWER Directive 9834.7-1B. [2]

[1] This information does not constitute a non-binding preliminary allocation of responsibility ("NBAR") under CERCLA Section 122(e)(3), 42 U.S.C. § 9622 (e)(3), and should not be construed as an allocation of responsibility or liability by EPA. The Draft Volumetric Ranking Summary is provided solely for your information. This list contains information on each PRP pertaining to volume only.

EPA has provided the above documentation in an effort to facilitate communication and negotiations between the PRPs. EPA considers this Site a good candidate for de minimis settlement discussions. Please refer to the EPA guidance on de minimis settlements for more information on how EPA may delineate de minimis and de maximus parties. You will find your percentage of "waste-in" in "Attachment 3," "Draft Volumetric Ranking."

If you wish to contest EPA's liability findings regarding the waste-in list, the volumetric ranking, or some other document, EPA invites you to call (215) 928-7918. Please leave a clear, concise message including your name and telephone number where you may be reached and an agency representative will call you as soon as possible. Please do not leave a detailed description of your challenge on the answering machine since it is preferable that you speak directly with the EPA employee(s) assigned to the Site. If your message is not returned within a 48-hour period, please leave another message. If you have information or documentation which would aid in your liability challenge, kindly present this to EPA within 15 days of receipt of this letter. The presentation of clear and convincing evidence may eliminate the need for EPA to send you any additional correspondence, including special notice, regarding this Site.

PRP STEERING COMMITTEE

EPA recommends that all PRPs meet to select a Steering Committee responsible for representing the group's interests. Establishing a manageable group is very important for successful negotiations with EPA.

EPA intends to hold an initial meeting on **December 5, 1996,** at 10:00 am for all interested parties. The meeting will be held at the Philadelphia Convention Center, 1101 Arch Street, Room 105AB. There is no onsite parking available at the Convention Center. Public Parking is available in the surrounding vicinity. At this meeting, you will have an opportunity to speak with EPA representatives regarding any Site-related issue, with the exception of remedy selection.[3]

ADMINISTRATIVE RECORD

Pursuant to CERCLA Section 113(k), 42 U.S.C. §9613(k), EPA establishes an administrative record that contains documents which form the basis for EPA's decision on the selection of each response action for a site. The administrative record will be available to the public for inspection and comment before any remedy is selected by EPA. A copy of the record is located in the Chester County Library, 400 Exton Square Parkway, Exton, PA 19341, and another copy is located at the EPA Region III office, 841 Chestnut Building, Philadelphia, PA 19107. The administrative record will be updated prior to issuance of the Proposed Plan. At the time of issuance, and as part of the Proposed Plan you will be notified of the contact person for comments on the administrative record.

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[2]See also, Methodology for Early De Minimis Waste Contributor Settlements under CERCLA Section 122(g)(1)(A), June 2, 1992, OSWER Directive 9834.7-1C (supplement).

[3]It is anticipated that the ROD for this Site will be issued in early 1997. Any questions or comments regarding the remedy selection should be reserved until the public comment period following issuance of the Proposed Plan.

Upon completion of the public comment period and EPA's review of the comments, EPA will select the remedy for the Site. The selection of the remedy will be documented in a Record of Decision (ROD), which will also become part of the administrative record.

PRP RESPONSE AND EPA CONTACT

You are encouraged to contact EPA in writing by **November 28, 1996,** to express your willingness or unwillingness to participate in future negotiations concerning this Site. Your response will be considered by EPA in determining whether the special notice procedure should be used for this Site.

If you are already involved in discussions with State or local authorities, engaged in voluntary action, or involved in a lawsuit regarding this Site, you should not interpret this letter as advising or directing you to restrict or to discontinue any such activities. You should, however, report the status of those discussions or activities in your letter to EPA. Please provide EPA with a copy of your letter to any other party involved in those discussions.

Your response should be addressed to:

Linda Dietz, 3HW21
Remedial Project Manager
U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be, and cannot be relied upon as a final EPA position on any matter set forth herein.

If you have any questions regarding the foregoing, please call **(215) 928-7918.** Depending on the nature of your call, one of several EPA employees will respond to your inquiry.

Sincerely,

Abraham Ferdas, Associate Division
Director for Superfund Programs
Hazardous Waste Management Division

Enclosures

cc: Meg Murphy, Esquire
April Flipse (PADEP)

ATTACHMENT 1: SITE FACTSHEETS

United States
Environmental Protection
Agency

Region III

July 1995

Malvern TCE Superfund Site
East Whiteland Township, Pennsylvania

ACTIVITIES UPDATE

EPA will hold an informational session for the public about the progress at the site at 7 p.m. Monday, July 31, at the East Whiteland Township Building, 209 Conestoga Road.

EPA is presently conducting a Remedial Investigation/Feasibility Study (RI/FS) at the site to identify and delineate contamination and to develop alternatives to remediate the site. The RI/FS process is one of the early steps taken toward cleaning up a site.

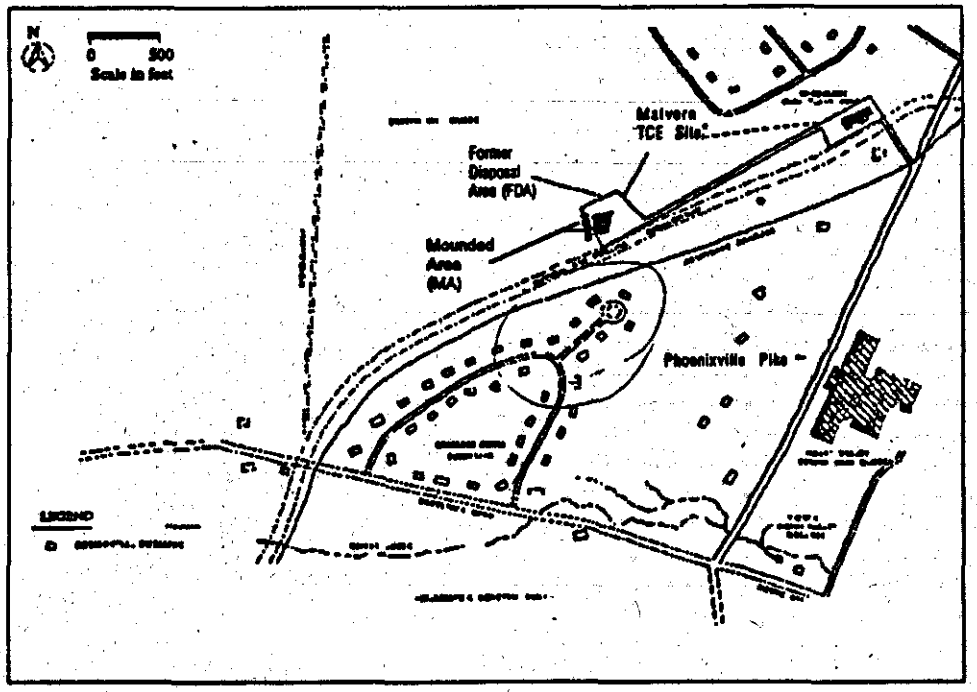
Steps in the Superfund Process

- Site Discovery
- Hazard Ranking
- National Priorities List (NPL)
- **Remedial Investigation**
- Feasibility Study
- Proposed Plan
- Public Comment Period/Public Meeting
- Record of Decision
- Remedial Design/Remedial Action
- Operation and Maintenance
- Deletion from National Priorities List

Site Background

The Malvern TCE Superfund site is located on North Phoenixville Pike in East Whiteland Township, Chester County, Pennsylvania (see the map). At the site, impurities were removed from industrial cleaning solvents. Approximately 5 acres in size, the site lies on the southeast side of Bacton Hill. The distilled solvents, including trichloroethene (TCE); 1,1,1-trichloroethane (1,1,1-TCA); perchloroethylene (PCE); and methylene chloride (MEC) were recycled and sold.

Groundwater contamination associated with the site was first identified in 1980 in residential wells on Phoenixville Pike and in the Hillbrook Circle development. Samples of water from these wells contained elevated concentrations of TCE and related volatile organic compounds (VOCs). Sources of soil and groundwater contamination are associated with three areas of the site. The three areas are the main plant area, the former disposal area (FDA), and the mounded area (MA). The FDA and MA are located 1,900 feet southwest of the main plant.



Current Site Activities

EPA entered into an interagency agreement with the United States Geological Survey (USGS) in October 1994 to perform an expanded hydrogeologic investigation at the site. The field portion of the investigation began in November 1994 and is scheduled to be completed by fall 1995. A report will be submitted to EPA in January 1996. CH2M HILL, a contractor to EPA, has been helping EPA perform remedial investigation activities. A data summary report was prepared evaluating and interpreting site information that was first generated in 1980, when groundwater contamination was first detected, to 1993, when the office of Superfund assumed the lead for remedial activities.

As part of the RI/FS process, some field activities are continuing and others will begin this summer and fall. Local residents will be notified before the following field investigation tasks commence this summer and fall:

- Residential Well Sampling and Carbon Filter Maintenance— EPA has assumed responsibility for collecting groundwater samples from 52 residential wells in the Hillbrook Circle development and on Phoenixville Pike. In addition, EPA has assumed responsibility for the annual maintenance of carbon filters that were installed in 20 of the residences affected by site-related contaminants.

- Exploratory Boreholes/Monitor Wells— Monitor wells will be drilled in or near the main plant area, FDA, and MA. These wells also will be geophysically surveyed.

- Groundwater Sampling— To characterize the extent of contamination, groundwater samples will be collected from zones within the deep exploratory borings.

- Aquifer Testing— Three 24-hour pumping tests will be performed at three of the new deep monitor wells to evaluate aquifer hydraulic characteristics. Knowing these characteristics is essential to designing a system to remove and treat groundwater contamination. Nearby residential wells along with other onsite wells will be used as observation points during the pumping tests.

- Regional Water Level Map— To evaluate the direction and rate of groundwater flow and contaminant migration, USGS will generate a regional water level map for the area around the Malvern TCE site. Local public water supply wells, domestic wells, and monitor wells will be incorporated into the map.

- Water Level Survey— Continuous monitoring will be performed over a 5-month period to determine temporal trends in water levels and to help further define the direction of groundwater flow.

- Soil Borings at the Main Plant Area— To identify the source of soil and groundwater contamination at the main plant area, approximately 20 soil borings will be installed in areas such as the former location of underground tanks, the loading areas, and an area where distillate from the recycling processes was discharged onto the ground.

Summary of Remedial Activities at Malvern TCE Site

Activity	Date	Responsible Party
Groundwater Investigation	1982	Site Owners
NPL Listing	1982	EPA
Drum Removal at FDA	1984	Site Owners
Consent Order	1987	Site Owners/EPA
RFI Workplan	1989	Site Owners w/EPA Oversight
Drum Removal at MA	1990	Site Owners w/EPA Oversight
Soil and Groundwater Investigations	Conducted 1990-1993, *Not Completed*	Site Owners w/EPA Oversight
Transfer from RCRA to Superfund	1993	EPA

All existing monitor wells have been geophysically logged (October 1994) and surveyed with a borehole video camera to determine their condition and suitability for future monitoring use.

Contamination Identified at the Site

Since 1980, 14 monitor wells have been installed at the Malvern TCE site to assess the extent of contamination. VOC contamination has been detected continuously in 12 of the 14 monitor wells. Monitor wells installed along the northeast boundary of the main plant area exhibit some of the highest concentrations of VOCs at the site.

Fifty-four residential wells exist southwest of the site in the Hillbrook Circle development and on Phoenixville Pike. All of these wells have been sampled at least once since 1980. The most prevalent VOC compounds in the samples, such as TCE, PCE, and 1,1,1,-TCA, are associated with the solvent recycling process at the Malvern TCE site.

Removal of the buried drums and contaminated soil from the FDA and MA appears to have affected time-related contaminant trends in the onsite monitor wells and offsite residential wells. Most of the monitor wells at the FDA and nearby residential wells have shown progressively decreasing VOC concentrations since 1990. In contrast, onsite monitor wells at the main plant area have shown increasing or stable concentrations with time. These time-related trends in groundwater contamination indicate that the source of contamination at the FDA and MA has been removed. The source of contamination at the main plant area is still under investigation.

If you would like your name added to the Malvern TCE mailing list, please complete this form and mail to:

Carolyn Szumal,
Community Involvement Facilitator
U.S. EPA Region III (3EA30)
841 Chestnut Street
Philadelphia, PA 19107

Name: _____

Address: _____

City: _____

State: _____ Zip Code: _____

Phone: _____

Questions

If you have questions concerning the site or any of the ongoing investigations, please contact Linda Dietz, Remedial Project Manager, at (215) 597-6906, or Carolyn Szumal, Community Involvement Facilitator, at (215) 597-6911. EPA will be participating in or overseeing a considerable amount of activity at the site in the near future. Should you see work being done at the site that you have no knowledge of, please contact Linda or Carolyn.

Glossary

FDA Former Disposal Area. This area is located 1,900 feet southwest of the main plant area along the Transcontinental Gas pipeline easement. Drums containing residual, or "still-bottom," sludges from the solvent recovery process were deposited in a large depression, which was originally excavated to provide fill material during construction of the pipeline.

MA Mounded Area. This area is located adjacent to the FDA and consists of a former stormwater run drums containing still-bottom sludges from the site owner's distillation process. The drums were covered with soil, creating several elongated mounds.

NPL National Priority List. The NPL is a national ranking list for hazardous waste sites within the Superfund Program

Soil Borings Soil borings are exploration holes used to characterize geology and the distribution of soil contamination in the subsurface. Usually, a borehole is drilled to a target horizon such as the water table or top of bedrock. During the drilling, soil samples can be collected by a variety of methods. These samples are characterized in terms of color, grain size, and structure, and can be submitted to a laboratory for chemical analysis.

VOC Volatile Organic Compound. VOCs are organic compounds which, to some degree, vaporize upon contact with air. All compounds associated with activities at the Malvern TCE site are VOCs.

EPA
United States Environmental Protection Agency

Region III
841 Chestnut Street
Philadelphia, PA 19107

PLACE STAMP HERE

Malvern TCE Superfund Site
Activities Update
Malvern, Pennsylvania

841 Chestnut Building
Philadelphia, PA 19107

October 1995

BACKGROUND

The Malvern TCE Superfund Site is located on North Phoenixville Pike in East Whiteland Township, Chester County, Pennsylvania. The Site lies on the southeast side of Bacton Hill. Distilled solvents, including trichloroethene (TCE), 1,1,1trichloroethane (1,1,1-TCA), perchloroethylene (PCE), and methylene chloride (MEC) were recycled and sold at the property. Groundwater contamination associated with the site was first identified in 1980 in residential wells on Phoenixville Pike and in the Hillbrook Circle development. Samples of water from these wells contained elevated levels of TCE and related volatile organic compounds.

GROUNDWATER INVESTIGATION

The United States Geological Survey (USGS) has subcontracted with Roland Rab & Son to perform drilling operations for installation of monitoring wells around the former disposal area (FDA) and the main plant area. Drilling began the week of October 16, 1995.

SOILS INVESTIGATION

EPA is currently planning the soils investigation of the main plant area and the former disposal area with its contractor, CH2M Hill. This investigation work is expected to take place before the end of the year. Once the fieldwork is completed the data will be evaluated to determine the most appropriate method for cleaning up the site. At the conclusion of the investigation, EPA will hold a public meeting to present the data findings to the community.

RESIDENTIAL SAMPLING

In June and July 1995, EPA sampled fifty homes and contracted with a plumber to inspect the filter systems. This summer, five homes had complete filter replacements, two homes had the carbon in their filter replaced, and four homes had plumbing maintenance

performed. In October 1995, the carbon in the filters of the remaining homes will be replaced. Staff from CH2M-Hill will be contacting residents to schedule this filter maintenance.

QUESTIONS:

Contact Linda Dietz, Remedial Project Manager at (215) 597-6906 or Carolyn Szumal, Community Involvement Coordinator at (215) 597-6911.

United States Environmental Protection
Agency, Region III (3EA30)
841 Chestnut Street
Philadelphia, PA 19107

Official Business
Penalty for Private Use
$300

Malvern TCE Superfund Site

MALVERN TCE SUPERFUND SITE

East Whiteland Township, Malvern, Pennsylvania

Activities Update

March 1996

SAMPLING TO BEGIN AT THE SITE

As part of the on-going remedial investigation, EPA will test the soil and groundwater at the Malvern TCE Superfund Site. A variety of sampling methods will be used to gather information on the soil contamination at the site.

A drilling rig will collect soil samples by boring down into the soil to selected depths, allowing EPA to analyze the extent of soil contamination. Advanced Drilling, Inc. has been subcontracted by EPA's remedial contractor, CH2M Hill, to perform the soil boring at the site.

The information collected during this phase of sampling will allow EPA to characterize the extent and nature of the contamination from the site. It also will allow EPA to evaluate the health risk the contamination may pose to anyone coming in contact with the contamination. EPA anticipates that the analysis of the sampling data will be completed by the end of the summer.

EPA APPROVES SAMPLING PLAN

EPA approved the Sampling Plan for the Malvern TCE Site. The plan presents the methods Advanced Drilling, Inc. will use to complete the sampling activities described above. EPA will place a copy of the Sampling Plan in the Administrative Record, located in the reference area of the Chester County Library.

QUESTIONS?

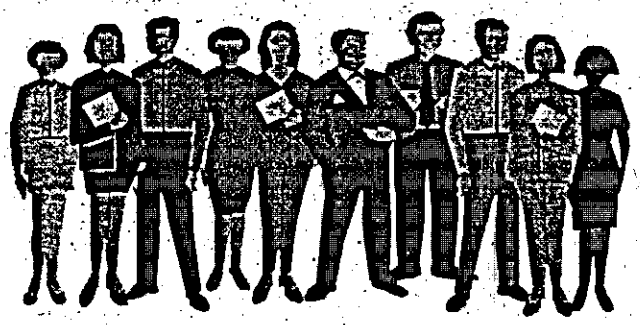
If you have questions about the Malvern TCE Site or need additional information, please contact Carolyn Szumal, Community Involvement Coordinator, via telephone at 215-597-6911 or 1-800-553-2509 or via e-mail at szumal.carolyn@epamail.epa.gov. EPA will also post information about the site on the Internet at URL http://www.epa.gov/reg3hwmd/super/npllist.htm?= ++++Superfund+++.

IMPACT OF SAMPLING ON THE COMMUNITY

During the period of sampling, EPA will monitor the air and soil continuously to ensure that the health and safety of on-site workers and nearby residents is protected. ***Because activities at the site will not include regrading of the soil, the drilling and sampling will have no impact on water wells, filtration systems, septic systems, or public water supplies.***

EPA CONDUCTS INTERVIEWS

EPA began the process of developing a Community Relations Plan by conducting interviews with residents of the Hillbrook Circle and Aston Woods areas. EPA talked with residents about their issues and concerns with the site, the types of information they want to receive, and how EPA can meet these information needs most effectively.



The Community Relations Plan will serve as a blueprint for EPA's community relations activities and will address the issues and concerns raised by residents during the interviews. Once the Community Relations Plan is completed, EPA will place a copy in the Administrative Record.

EPA PLANS RESIDENTIAL SAMPLING

EPA plans to conduct its next round of residential water sampling in June. EPA will mail the results of the sampling directly to residents.

MALVERN TCE SUPERFUND SITE

East Whiteland Township, Malvern, Pennsylvania

Information Meeting Announcement

April 1996

The United States Environmental Protection Agency is holding an information session to discuss the Malvern TCE Superfund Site. Community members concerned about the possible health affects of the contamination associated with the site, hydrogeology issues, or other issues regarding the Malvern TCE Superfund Site are encouraged to attend. EPA staff will be available to discuss both general and specific site concerns.

ATTENDING OFFICIALS

The following government officials from the United States Environmental Protection Agency (EPA) and the United States Geological Survey (U.S.G.S.) will be at the meeting to answer any questions or concerns you might have:

- Linda Dietz
  Remedial Project Manager, EPA
- Dawn Hoyen
  Toxicologist, EPA
- Barbara Rudnick
  Hydrogeologist, EPA
- Ron Sloto
  Hydrogeologist, U.S.G.S.
- Carolyn Szumal
  Community Involvement Coordinator, EPA

Where: Great Valley Senior High School
225 North Phoenixville Pike
Malvern, PA 19355
Meeting Room - Audion 70

When: Thursday, April 25, 1996

Time: 5:00 p.m. - 8:30 p.m.

APRIL 1996

S	M	T	W	T	F	S
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7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25 ★	26	27
28	29	30				

Questions?

If you have questions about the Malvern TCE Site or need additional information, please contact Carolyn Szumal, Community Involvement Coordinator, via telephone at 1-800-553-2509 or via e-mail at szumal.carolyn@epamail.epa.gov.

Directions to Meeting Room Audion 70:

Go in the main entrance of Great Valley Senior High School. Pass the cafeteria and turn right. Go past the gymnasium. Follow the hallway down through the double doors. Turn left. When you pass the lockers, stay to the right of the hallway. The set of stairs in front of you will take you down to the English wing where meeting room Audion 70 is located.

ATTACHMENT 2: YOUR COMPANY'S INVOICES

215 - 644 - 2986

CHEMCLENE CORPORATION

BOX 26, R. D. #1
MALVERN, PENNSYLVANIA 19355

Purchased From: Resource Tech. Svcs., Inc.
Devon, Penna.

Dynamic Services
Ivyland, Penna.

Date: April 26, 1980

Your Shipping Number: 10/16/79

Our Receiving Number: 9661

QUANTITY RECEIVED DRUMS/LBS. NET	MATERIAL	QUANTITY RECOVERED LBS. NET	PRICE	TOTAL
1/610 lbs.	Perchlorethylene	363 lbs.	$0.03/lb.	$10.89
1/530 lbs.	Trichlorethylene	336 lbs.	$0.03/lb.	$10.10
1 drum heel produeed.		Check #10276 enclosed.		

RECEIVING RECORD 9661

RECEIVED FROM: RESOURCE TECH SERV

ADDRESS: (FROM DYNAMIC SERVICES, INC. LAND, PA)

PURCHASE ORDER NO. OR RETURNED GOODS	FREIGHT BILL NO.	DATE	
		16 OCT 79	
VIA V.T. - GEORGE		PREPAID	COLLECT

	QUANTITY	ITEM NUMBER	DESCRIPTION
1	1	DRM	PERC WASTE
2	1	Drum	Tri Waste.
3			
4			Prod Perc 30
5			Prod Tri 40
6			PERC – TRI –
7			REC = 610 REC = 530
8			RECOV. = 363 RECOV. = 336
9			@0.03 = 10.89 @0.03 = 10.10
10			1 DR. HAZ. PROHIBITED.
11			CK # 10276 ENCLOSED
12			

REMARKS: CONDITIONS, ETC.

NO. PACKAGES	WEIGHT	RECEIVED BY	CHECKED BY	DELIVERED TO

Rediform ®
2H 259

BE SURE TO MAKE THIS RECORD ACCURATE AND COMPLETE

RECEIVING RECORD

9661

RECEIVED FROM
RESOURCE TECH SERV

ADDRESS
(FROM DYNAMIC SERVICES, LYNLAND, PA)

PURCHASE ORDER NO. OR RETURNED GOODS	FREIGHT BILL NO.	DATE	
		16 OCT 79	
VIA V.T. - GEORGE		PREPAID	COLLECT

	QUANTITY	ITEM NUMBER	DESCRIPTION
1	2	DRS	PERC WASTE
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			

REMARKS: CONDITIONS, ETC.

NO. PACKAGES	WEIGHT	RECEIVED BY	CHECKED BY	DELIVERED TO

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ATTACHMENT 3: DRAFT VOLUMETRIC RANKING SUMMARY

Malvern TCE Superfund Site
Generator Volumetric Ranking

DRAFT 11/14/96

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PRP Name	Total Quantity (55 Gal. Drums)	Volumetric Ranking
A I W Frank	9.91	0.029%
A&J Screw Machine Products	8	0.023%
A&L Handles	43	0.125%
A. Duie Pyle	1	0.003%
A. Johnson & Co., Inc.	3	0.009%
A.S. Koch Corp.	248	0.720%
Accumetrics	26.6	0.077%
Accuracy Scientific	41	0.119%
Ace Service Corp.	1	0.003%
Acro Labels	88	0.256%
Action Manufacturing Company	225	0.654%
ADEC	6	0.017%
Adelphia Graphics Systems	36.97	0.107%
Aero Plating	15	0.044%
Agitar, Div. of Air Buensod, Inc.	9	0.026%
Airco Industrial Gases	14	0.041%
Airline Hydraulic Corporation	4	0.012%
Airworks	17	0.049%
Albright Paper & Box Corp.	1.11	0.003%
ALCOA	433	1.258%
Alfa-Laval Separation, Inc.	6	0.017%
Allister Mfg.	36	0.105%
Amchem	30	0.087%
American Electronics Laboratories	38	0.110%
Ames Supply	16	0.046%
Ametek, Inc.	85	0.247%
Ametek, Inc.	27	0.078%
Hunter Spring	58	0.168%
Amp Corp.	113	0.328%
AMRAM	55	0.160%
Amuneal Mfg. Co.	20	0.058%
Anchor Darling Co.	24.71	0.072%
Angelo	8	0.023%
Antenna Corp.	1	0.003%
Ark Products	52	0.151%
Armstrong Cork Co.	489	1.421%
Artco Corp.	21	0.061%
Asplundh Manufac. Co.	37	0.107%
Aston-Hill Co.	74	0.215%
Athena Controls	50	0.145%
Auto-Pack	4	0.012%
Aydin	325.42	0.945%

Malvern TCE Superfund Site
Generator Volumetric Ranking

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PRP Name	Total Quantity (55 Gal. Drums)	Volumetric Ranking
B.P. Oil	32	0.093%
Barrett Haentjenst & Co.	5	0.015%
Beckett Corporation	2938	8.535%
Beemer Engineering	35	0.102%
Bendtru Company	21	0.061%
Berg Laboratories	8	0.023%
Biddle Instrument Company	26	0.076%
Bilgram Gear Company	7	0.020%
Bishop Tube Co.	126.18	0.367%
Bo Peep Cleaners	17	0.049%
Boeing Property	2	0.006%
Boekel Industries	16	0.046%
Boyertown Packing Co.	6	0.017%
Brandt Corporation	5	0.015%
Brittany's Ltd.	4	0.012%
Brooks Instrument	18.5	0.054%
Brumbaugh Industries	35.2	0.102%
Budd Co.	3	0.009%
Bunnell Plastics, Inc.	19.54	0.057%
Burroughs Corp.	545	1.583%
C.K. Systematics, Inc.	22	0.064%
Camdel Metals	14	0.041%
Cantol Inc.	37	0.107%
Carvel Hall Inc	32	0.093%
Chem Cell Corporation	4	0.012%
Chem Par Corporation	39	0.113%
Chem-Solv	1	0.003%
Chester County Intermediate Unit	0.07	0.000%
Chobert Associates	91.38	0.265%
Chrono-Log Corporation	8	0.023%
Cincinnati Time	1	0.003%
Classic Coachworks	14	0.041%
Clifton Precision	124	0.360%
Coatings For Industry Inc.	6	0.017%
Cobra Wire & Cable Co.	17	0.049%
Concurrent Computer Corp.	16	0.046%
Connecticut Mixed	12	0.035%
Container Research Corporation	113.01	0.328%
Contamination Control, Inc.	8	0.023%
Continental Vanguard, Inc.	50.45	0.147%
Control Switch	32.48	0.094%
Controls Service & Engineering	5	0.015%

Malvern TCE Superfund Site
Generator Volumetric Ranking

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PRP Name	Total Quantity (55 Gal. Drums)	Volumetric Ranking
Cook Specialty Company	32	0.093%
Crown Marketing Equip Co.	12	0.035%
CSS International Corp.	37.84	0.110%
CW Industries	12	0.035%
Cyprus Foote Mineral Co.	538	1.563%
Danco Tool & Mold Co.	3	0.009%
Data Media Inc	21	0.061%
Davey Products	43	0.125%
David K. Robson, Inc.	21	0.061%
Decision Data	36	0.105%
Defense Reutilization & Marketing	195.21	0.567%
Delaware Container Co. Inc.	9	0.026%
Delbar Products	353	1.026%
Delco Wire & Cable/ Delco Electrical	48	0.139%
Delmaco Mfg. Inc.	2	0.006%
Deltron Incorporated	26	0.076%
Dentronix, Inc.	8.04	0.023%
Dettra Flag Co.	10	0.029%
Devil Biss Co.	9	0.026%
Devon Apparel	1	0.003%
Display Corporation of America	30	0.087%
Diversified Electronic Corp.	18.17	0.053%
Dixon Industries Corp.	5	0.015%
Doehler - Jarnes	4	0.012%
Donn Corporation	295.5	0.858%
Dorado Fabrics	101	0.293%
DPDO Knox	57	0.166%
Drandt	1	0.003%
Drexelbrook Engineering	8	0.023%
Dynamic Services	3	0.009%
E. Hopkins Co.	4	0.012%
E.I.T. Inc., Enterra Instrumentation	3.09	0.009%
E/M Corporation	13	0.038%
East West Label Co. Inc.	48.14	0.140%
Eaton	38	0.110%
Elco Corporation	61	0.177%
Eldredge, Inc.	7	0.020%
Electro Platers of York Inc.	212	0.616%
Electro Tech Systems Inc.	1	0.003%
Electroloy	33	0.096%
Electronic Display	170.45	0.495%
Ellisco	8.54	0.025%

Malvern TCE Superfund Site **DRAFT 11/14/96**
Generator Volumetric Ranking

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PRP Name	Total Quantity (55 Gal. Drums)	Volumetric Ranking
Emeco	19	0.055%
Empire Abrasive & Equipment Corp.	118.79	0.345%
EMR Photoelectric	15	0.044%
Ervins Crafts	5	0.015%
Ext-Corporol	4	0.012%
Fabric Development	13.74	0.040%
Fairchild Space Systems	8	0.023%
Fairfax Cleaners	4	0.012%
Far East Foods	4	0.012%
FBF Industries Inc.	160	0.465%
Fendt Finding Co., Inc.	7	0.020%
Fergusson	5.96	0.017%
Fisher & Porter Co.	778.91	2.263%
Fisher & Porter Co.	715.91	2.080%
Andrews Glass Company Inc.	63	0.183%
Floor Systems Inc.	76.12	0.221%
Fluid Power, Inc.	5	0.015%
Formation Inc.	12	0.035%
Formosa Plastics	39	0.113%
Franklin Mint	3	0.009%
Frazer-Volpe Corporation	27.62	0.080%
Frontier Chemical Waste Process	3	0.009%
G.K. Garrett Corp.	27.45	0.080%
Gala Industries	6.54	0.019%
Gas Springs	13	0.038%
Gateway Terminal	15	0.044%
General Electric	376	1.092%
General Motors Corporation	534	1.551%
Giles & Ransome	112	0.325%
Giltech Inc.	7	0.020%
Glah Bros., Inc.	3	0.009%
Globe Solvents	66	0.192%
Gloucester County Times	6	0.017%
Graphic Packaging Corp.	61	0.177%
Green Tweed Co.	5	0.015%
Gulf & Western	2	0.006%
H & L Cleaners	3	0.009%
H-V Industries, Inc.	150.88	0.438%
Hahn Truck Sales	9	0.026%
Hale Pumps, Inc.	4	0.012%
Hamilton Precision Metals	610.55	1.774%
Hamilton Technology, Inc.	1503	4.366%

Malvern TCE Superfund Site
Generator Volumetric Ranking

DRAFT 11/14/96

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PRP Name	Total Quantity (55 Gal. Drums)	Volumetric Ranking
Hamilton Watch Co.	881	2.559%
Handy & Harman Tube Co.	250	0.726%
Heil Co.	31	0.090%
Hercules Aerospace Display Systems	264	0.767%
Herman Goldner Co. Inc.	8	0.023%
HI Services Inc.	1	0.003%
High Energy Company	73	0.212%
Hollingsworth	8.75	0.025%
Honeywell Instruments	5	0.015%
Hough/Loew Associates	1.9	0.006%
Hulltronics	2	0.006%
Hurst Perf.	18	0.052%
Hurst, Richard	4.07	0.012%
HV Industries, Inc.	7	0.020%
ICI Americas	72.72	0.211%
Imperial Specialty	10	0.029%
Industrial Systems Design	3	0.009%
Inland Pumping & Dredging Corp.	106	0.308%
Interstate Mushroom Supply	5	0.015%
Iron Bound Heat Treating Co.	7	0.020%
J W Fell Inc.	1	0.003%
J W Rex Co.	69	0.200%
James Spring & Wire Co.	237	0.689%
Jenson, Homer	0.03	0.000%
Jetshapes Inc.	27	0.078%
John Evan's & Sons, Inc.	253	0.735%
Johnson Company	2	0.006%
Johnson-Mathey	30	0.087%
Johnson-Mathey, Inc.	30	0.087%
K-D Tool Manufacturing	126	0.366%
Kawneer Co.	26	0.076%
Kem Foam	10	0.029%
Keystone Transformer	8	0.023%
Kim Manufacturing	291	0.845%
Krautkramer-Branson, Inc.	12.79	0.037%
KSM Fastening Systems Division	6	0.017%
KSO Industries	12	0.035%
Kulicke & Soffa	21	0.061%
L & S Tool and Machine Co.	3	0.009%
LaFrance Corp.	449.8	1.307%
Laminators Inc.	21.5	0.062%
Lancaster Machinery Co.	43	0.125%

Malvern TCE Superfund Site
Generator Volumetric Ranking

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PRP Name	Total Quantity (55 Gals Drums)	Volumetric Ranking
Lavelle Aircraft Co.	205.6	0.598%
Leeds & Northrop Co.	150	0.436%
Lightman Co.	1	0.003%
Lincoln	3	0.009%
Litton Industries	9	0.026%
London Harness & Cable	26	0.076%
Lowry's	3	0.009%
Mack Electric	0.27	0.001%
Mack Wayne Plastics	12	0.035%
Maida Development	72	0.209%
Malco	91.04	0.264%
Manoragraphics	41.84	0.122%
Mars Electronics Inc.	127.52	0.370%
Mars Money Systems	2	0.006%
Materials Electronic Products	87	0.253%
Matheson Gas Products	2.54	0.007%
Matheson Instrument	26.54	0.077%
Matthew International	3	0.009%
McClarin Plastics	195.03	0.567%
McGee Industries Inc.	97	0.282%
McHugh Railroad Maint Equip Co.	4	0.012%
Mcneil Laboratories	11.09	0.032%
Meade Packaging	11	0.032%
Met Fin	7	0.020%
Mida Manufacturing	23	0.067%
Mitchell Specialty	20	0.058%
Model Finishing	36	0.105%
Moore Products	114	0.331%
Morning Call	355.07	1.032%
MQS Inspection Inc./Magnaflux	46.65	0.136%
N W Controls	435.03	1.264%
Napp Chemical	39	0.113%
Narco Avionics	22	0.064%
National Computer Systems	1	0.003%
National Metal Crafters	16	0.046%
National Products	1	0.003%
National Solvents Inc.	164	0.476%
Naval Air Development Center	2	0.006%
Naval Air Station	10	0.029%
Netzsch Inc.	81.2	0.236%
Neutronics	10	0.029%
NGK Metals	668	1.941%

Malvern TCE Superfund Site
Generator Volumetric Ranking

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PRP Name	Total Quantity (55 Gal Drums)	Volumetric Ranking
NGK Metals	180	0.523%
Cabot Berylco	143	0.415%
Cabot Company	13	0.038%
Cabot Wrought Product	27	0.078%
Kawecki Berylco	305	0.886%
Ni-Chro	3	0.009%
Norco Finishing	16.5	0.048%
North Industrial Chemicals	90	0.261%
North Penn Polishing & Plating	45	0.131%
Olympic Tool & Machine Co.	16	0.046%
Oxford Metal Products	31	0.090%
P H L Inc.	2	0.006%
P Q Corporation	67	0.195%
Paris Business Forms	2	0.006%
PECO Oregon Maintenance Shops	34	0.099%
Penflex Inc.	109	0.317%
Penguin Industries	119	0.346%
Penn Airborn Product	14	0.041%
Penn Dye & Finishing	12	0.035%
Pennsbury Manufacturing	36	0.105%
Pennwalt Corp.	24	0.070%
Pepco Manufacturing Co.	2	0.006%
Peripheral Dynamics	3	0.009%
Perkin-Elmer	1	0.003%
Permutit/Sybron Corp.	3	0.009%
Peter Paul Cadbury Co.	2	0.006%
Petrarch	6	0.017%
Petrocon	35	0.102%
Petter Engraving Inc.	2.04	0.006%
Philadelphia Naval Shipyard	136	0.395%
Philadelphia Rust Proof Co. Inc.	21	0.061%
Philadelphia School District	10	0.029%
Philadelphia Steel Co. Inc.	43	0.125%
Phillips & Jacob	16	0.046%
Photofabrication Chem & Equip	7.63	0.022%
Photolastic Inc.	11	0.032%
Pitman Corp.	47	0.137%
Plate Crafters Inc.	16	0.046%
Plymouth Tube	548.71	1.594%
Pocono Foundry Inc.	1	0.003%
Polysciences	202	0.587%
Ponderosa Disposal Co.	13	0.038%

Malvern TCE Superfund Site
Generator Volumetric Ranking

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PRP Name	Total Quantity (55 Gal. Drums)	Volumetric Ranking
Porter Instruments	258.34	0.751%
PP & L	260.42	0.757%
PP & L	87.27	0.254%
PP & L Berwick	3	0.009%
PP & L Brunner Island	21	0.061%
PP & L Central	14.15	0.041%
PP & L Hazel	3	0.009%
PP & L Hazelton	4	0.012%
PP & L Holtwood	26	0.076%
PP & L Lancaster	1	0.003%
PP & L Lehigh	1	0.003%
PP & L Martins Creek	85	0.247%
PP & L Montour	2	0.006%
PP & L Northern Div. S.C.	2	0.006%
PP & L Sunbury	10	0.029%
PP & L Susquehanna	1	0.003%
Precision Arts Mfg.	3	0.009%
Princo Instruments Inc.	89	0.259%
Prodelin Inc.	9	0.026%
Pyco Inc.	5	0.015%
Quaker City Chemicals	494.11	1.435%
R & E Martin, Inc.	158	0.459%
R C A	177	0.514%
R C Kletzing	2.5	0.007%
R.R. Donnelley & Sons, Inc.	28	0.081%
RDL Inc.	25.04	0.073%
Reading Door Closures	4	0.012%
Reilly Plating	472	1.371%
Repco	14	0.041%
Resource Technology Services, Inc.	1045.48	3.037%
Reynolds Cleaners	4	0.012%
Reynolds Metals	9	0.026%
S G L	6	0.017%
S K F Industries Inc.	273.54	0.795%
S P D Technologies	206	0.598%
S P D Technologies	83	0.241%
Gould Inc.	123	0.357%
S P S Technologies	161	0.468%
Samuel Miller & Sons	280	0.813%
Sandvik, Inc.	2	0.006%
Sanivan Labs	4	0.012%
Schmidt Brewery Co.	1	0.003%

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PRP Name	Total Quantity (55 Gal. Drums)	Volumetric Ranking
Schramm Inc.	1	0.003%
Scotco Design Group Inc.	80.24	0.233%
Scott Paper Corp.	4	0.012%
Screen Gems	0.35	0.001%
Shared Medical Systems	3.63	0.011%
Sharples, Inc.	16	0.046%
Sharpoint	12	0.035%
Shur-Kut Supply Corp.	7	0.020%
Sikkens Co.	18	0.052%
Silvine	3	0.009%
Simco Company Inc.	9.81	0.028%
Simon Wrecking Company Inc.	948.62	2.756%
Simonetta Brothers	53.22	0.155%
Simpson Sign Co.	16	0.046%
Singer Co.	3	0.009%
Solar Atmospheres	4	0.012%
Solatario	57	0.166%
Solid State Scientific	32	0.093%
Sonic Instruments	15	0.044%
Specialty Castings Inc.	46	0.134%
Specialty Glass Products	1	0.003%
Spencer Gifts	1.5	0.004%
Sperry Univac	2	0.006%
Spra-Fin Inc.	91.36	0.265%
Sprague-Griffiths Div.	9	0.026%
Star Dental Corporation	707	2.054%
Stein Seal Co.	152.36	0.443%
Sterling Fleishman Co.	3.11	0.009%
Storm Weather Products	36	0.105%
Sunroc Corp.	86	0.250%
Suntemp Industries	9	0.026%
Superior Metal Products	58	0.168%
Superior Tube	136	0.395%
Sweda International	21	0.061%
Syntex Dental Products	115	0.334%
Synthane Taylor Corp.	59	0.171%
Techalloy Inc.	11.66	0.034%
Technical Products	14	0.041%
Tele Dynamics	6	0.017%
Telegenix Inc.	30	0.087%
Thermoseal Glass Corporation	2	0.006%
Thomson Engineering Co.	0.02	0.000%

Malvern TCE Superfund Site
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PRP Name	Total Quantity (55 Gall Drums)	Volumetric Ranking
Tom Myers Furniture Stripping	1	0.003%
Total Recovery	285.59	0.830%
Transducer Systems Inc.	28.5	0.083%
Trend Instruments Inc.	32.18	0.093%
Troemner, Henry	3	0.009%
TRW Inc.	0.45	0.001%
Tube Methods	0.5	0.001%
Tudor Tech Inc.	1	0.003%
U S Electronic Services Corp.	19	0.055%
U S Mint	5	0.015%
United Chem-Con Corp.	21	0.061%
United Contamination Controls In	4	0.012%
US Navy Base (DPDO)	35	0.102%
USA Ardec	11	0.032%
USG Interiors	188	0.546%
Valley Forge Laboratories, Inc.	7	0.020%
Valley Forge Tape & Label Co.	120.52	0.350%
Victualic Company of America	4	0.012%
Villanova University	4	0.012%
Vishay Resistive Systems	306.09	0.889%
Viz Manufacturing	864.4	2.511%
Waste Conversion	103.3	0.300%
Wave Energy Systems	3	0.009%
Welding Co.	1	0.003%
Welex Inc.	67	0.195%
Westcode Inc.	27.22	0.079%
Western Electric	2228	6.473%
Westinghouse	25	0.073%
Wilkinson Industries	6	0.017%
Wittronics	10	0.029%
Woodstream Corp.	5	0.015%
Xynatech Inc.	39	0.113%
Yuasa-Exide Battery Corp.	19	0.055%
Zenith Products Corp.	63	0.183%
TOTAL:	34,422.19	100.000%

ATTACHMENT 4: LIST OF PRP NAMES AND ADDRESSES

Mailing List (Alpha Order)

A & J Screw Machine Products
Mr. Joseph Harmer, CEO
144 Limekiln Pike
Chalfont, PA 18914

A & L Handles
Mr. W. Leslie Wetty, CEO
244 Shoemaker Road
Pottstown, PA 19464

A. Duie Pyle*

A. Johnson & Co., Inc.*
President
215 Welsh Pool Road
Lionville, PA 19353

A.I.W. Frank*
President
96 E. Woodland Road
Pittsburgh, PA 15210

A.S. Koch & Corp.
c/o A.S Koch & Sons Corp.
Mr. Alfred Koch, Owner
139-143 Nevins St.
Lancaster, PA 17603

Accumetrics
Mr. Paul Pitcher, President
134 Adams St.
Royersford, PA 19468

Accuracy Scientific
Mr. Ferdinand Weiss, President
NE Corner 12th & Cambria Sts.
Philadelphia, PA 19147

Ace Service Corporation
Mr. William Eells, III, President
123 Wilder St.
Philadelphia, PA 19147

Acro Labels
Mr. Bob Regan, President
2531 Wyandotte Road
Willow Grove, PA 19090

Action Manufacturing Company
Mr. Arthur Matia, President
100 E. Erie Ave.
Philadelphia, PA 19134

ADEC
Mr. Wayne Allfrey, CEO
140 Stover Drive
Carlisle, PA 17073

*- Confirmed Address not found

Adelphia Graphic Systems
Mr. Alan Jacobson, President
302 Commerce Drive
Exton, PA 19341

Aero Plating*
President
661 South Evergreen Ave.
Woodbury Heights, NJ 08097

Agitar, Div. of Air Buensod, Inc.
President
Smith & Mitchell Sts.
Lansdale, PA 19446

Airco Industrial Gases
c/o BSC Gases
Mr. Seifi Ghasemi, President
575 Mountain Ave.
Murray Hill, NJ 07974

Airline Hydraulic Corporation
Mr. Joseph Laughran, President
I-95 & Street Road
Bensalem, PA 19020

Airworks
c/o UNC Airworks
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ATTACHMENT 5: EPA GUIDANCE ON DEMINIMIS SETTLEMENTS

December 20, 1989

OSWER Directive 9834.7-1B

Methodologies for Implementation of CERCLA Section 122(g)(1)(A) De Minimis Waste Contributor Settlements

United States Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

I N D E X

Methodologies for Implementation of CERCLA Section 122(g)(1)(A) De Minimis Waste Contributor Settlements

ENFORCEMENT CONFIDENTIAL Final December 29, 1989

METHODOLOGIES FOR IMPLEMENTATION OF CERCLA SECTION 122(g)(1)(A) DE MINIMIS WASTE CONTRIBUTOR SETTLEMENTS

I. PURPOSE AND INTRODUCTION

This document has been prepared to provide assistance to the Regional case staff (OSC, RPM, assistant Regional Counsel) in the evaluation and development of de minimis contributor settlement proposals and agreements. The methodologies presented are general suggestions only, as each site is unique and the terms of any de minimis settlement will depend on the individual facts of the case. The Superfund Amendments and Reauthorization Act of 1986 (SARA) codified the concept of de minimis settlements which was originally introduced in the "Interim CERCLA Settlement Policy" (December, 1984). Sections 122(g)(1)(A) (generators and transporters) and 122(g)(1)(B) (landowners) were designed by Congress as enforcement tools for the Superfund process. The focus of this guidance is solely on de minimis contributor settlements.[1]

Section II discusses the definition of a de minimis waste contributor. Section III summarizes the objectives in pursuing a de minimis settlement and Section IV outlines the criteria required for eligibility for any de minimis settlement proposal. Characteristics of potential de minimis candidates are covered in Section V. Section VI is an in depth discussion of the development of a de minimis proposal (site management plan, communication, timing, determination of eligibility, NBAR preparation, costs, premiums, calculations of PRP share, reopeners and settlement options). A summary on settlement issues and distribution of de minimis monies collected is covered in Section VII, negotiations

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[1]A separate document entitled "Guidance on Landowner Liability under Section 107(a)(1) of CERCLA, De Minimis Settlements under Section 122(g)(1)(B) of CERCLA, and Settlements with Prospective Purchasers of Contaminated Property" (issued on June 6, 1989, OSWER Dir. #9835.9, published on August 18, 1989 at 54FR34235) discusses de minimis landowner settlements. Two other guidance documents provide additional information on de minimis generator and transporter settlements: "Interim Guidance on Settlements with De Minimis Waste Contributors under Section 122(g) of SARA" (issued June 19, 1987, OSWER Dir. #9834.7, published on June 30, 1987 at 52FR24333); and "Interim Model CERCLA Section 122(g)(4) De Minimis Waste Contributor Consent Decree and Administrative Order on Consent" (issued October 19, 1987, OSWER Dir. #9834.7-1A, published on November 12, 1987 at 52FR43393).

and settlement. A list of guidance documents is provided at the end of this methodology.

II. DEFINITION

The June 19, 1987 "Interim Guidance on Settlements with De Minimis Waste Contributors under Section 122(g) of SARA" defines a de minimis party as a "potentially responsible party (PRP) who satisfies the requirements for liability under §107(a) of CERCLA and who does not have a valid §107(b) defense, but who has made only a minimal contribution (by amount and toxicity) in comparison to other hazardous substances at the site."

III. OBJECTIVES OF DE MINIMIS SETTLEMENTS

The objectives in pursuing a de minimis settlement are as follows:

- To resolve de minimis parties' CERCLA civil liability to EPA in a final manner for all past and future response activities at a site.[2]
- To resolve de minimis parties' CERCLA civil liability to EPA relatively early in the remedial process to reduce transaction costs for the settling de minimis parties and the government.
- To obtain a sum certain with, in most instances, a relatively modest effort on the part of the government. This replenishes the Superfund and may (if appropriate and if part of a comprehensive settlement under which response action will be performed by other site PRPs) provide upfront monies for the parties implementing the work at a site.
- To provide an incentive to non-de minimis parties to settle simultaneously by offsetting the contributions of de minimis parties from the total cost of the response action.

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[2]Nonetheless, under appropriate circumstances, de minimis settlements should contain a reopener that reserves the right of the United States to proceed against the de minimis party if it is later discovered that the party's contribution to the site exceeded that previously stated. The settlement may also contain reopeners to reserve the United States' right to proceed against the de minimis party if there are cost overruns or further response action is necessary in addition to the work specified in the ROD. For a more detailed discussion, including discussion of other standard reopeners, see "Reopeners," pp. 13-14 below.

- To simplify negotiations and litigation by reducing the total number of parties involved.

Several of the government's objectives in pursuing de minimis settlements also affect the non-de minimis parties at a site. In addition, the non-de minimis parties benefit in the following ways.

- The non-de minimis parties may not be burdened with third party suits against settling de minimis parties.
- The non-de minimis parties' transaction costs may be reduced.
- A de minimis settlement may, where appropriate, provide a source of start-up funds for a RD/RA.

IV. BACKGROUND: CRITERIA FOR ELIGIBILITY

The following criteria are specified in §122(g)(1) and in the de minimis guidance. In the evaluation of any de minimis settlement proposal, all of these criteria must be met.

- The settlement involves only a minor portion of the response costs at the site. This criterion is applied to the individual de minimis party's settlement payment (as required by §122(g)). The Agency also considers the collective de minimis parties' settlement payment (as a matter of policy). To date, collective de minimis settlement payments have ranged up to 33% of the site response costs.
- The amount of the hazardous substances contributed by the individual is minimal in comparison to other hazardous substances at the site. To date, settlement proposals have used between 0.2% and 2.0% of total waste at the site.
- The toxic or other hazardous effects of the substances contributed by the individual are minimal in comparison to other hazardous substances at the site. The June 19, 1987 guidance interprets "minimal in comparison" in the context of toxicity as "not significantly more toxic than...."
- The settlement is practicable and in the public interest. This is determined through an evaluation of the strength of the overall case including that against viable non-de minimis parties and the impact a de minimis settlement would have on the major party settlement and litigation.

  This element also includes an understanding of the government's interests in settling out with de minimis parties. The settlement should initially be based upon adequate information regarding project costs, PRP waste-in contributions, and PRP viability. In addition, the settlement

base payment should be based upon the PRPs' volumetric share augmented by their volumetric share of the orphan share.

The total de minimis PRP settlement should include, in addition, a premium payment[3] and/or reopeners for cost overruns during implementation of the remedy and for supplemental remedies or additional work to be performed in the event the implemented remedy is not protective of public health and the environment. Premiums are based on engineering and legal judgement in relation to the certainty of the government's remedy and the litigation risks of the case.[4]

V. CHARACTERISTICS OF POTENTIAL DE MINIMIS CANDIDATES

The characteristics of potential candidates are described below.

- The PRP must qualify for settlement under §122(g)(1)(A) as quoted above.

- The waste contributions (volume and toxicity) of each party generally are adequately documented (i.e., good waste-in list). In addition, the liability and viability of the non-de minimis parties are established. The PRP search is the source of this information. If insufficient data exist, generally the site should not be considered a candidate for de minimis treatment. The burden should be on the PRPs to provide information on volume and toxicity to back up any claims of de minimis eligibility.

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[3]Guidance on premium payments is provided in the "Guidance on Premium Payments in CERCLA Settlements" (issued on November 17, 1988, OSWER Dir. §9835.6).

[4]In general, the earlier a de minimis settlement is negotiated in the overall settlement/litigation process, or the greater the site-specific uncertainty regarding remedial costs, the larger the premium should be. Reopeners vary depending on the stage at which the settlement is reached and the estimated accuracy of the site cost estimates. In addition to the reopeners described above, at a minimum, there will be a reopener for additional PRP information gathered that may indicate that a party is not de minimis and a reservation of rights and criminal liability for natural resources damages, unless the Federal Natural Resource Trustee has agreed in writing to a covenant under §122(j) of CERCLA. Reopeners and premiums are used to insure that the government will minimize any unrecovered costs. Where the remedy involves off-site disposal, off-site redisposal liability may be a factor in determining risk premiums. More information on premiums and reopeners is presented in the following sections.

- Past costs have been well documented.

- Future remedial response costs are, or can be estimated and appropriate premiums can be developed. Reasonable, reliable and recent estimates for future costs should be available before the settlement is negotiated. Where very small contributors are involved and the site has reached the mid to late RI/FS stage, this criterion may be relaxed.

- One or more viable non-de minimis (major) PRPs exist against whom the government has a strong liability case. For instance, if all PRPs would qualify for de minimis treatment or if no viable major PRPS exist who would be financially able to undertake RD/RA, the site should not be considered a candidate for a de minimis settlement.

- De minimis PRPs have expressed interest in a settlement.

- The de minimis parties are well organized or can organize with limited governmental assistance. The de minimis parties, or the non-de minimis parties, should be willing to do the work necessary to develop and evaluate settlement proposals. Ultimately, however, the government must make the statutory findings that such a settlement is appropriate.

VI. EVALUATION OF A DE MINIMIS PROPOSAL

As indicated by the criteria for eligibility and characteristics of potential candidates described above, to enter into a de minimis settlement, EPA needs information on costs (past and future), wastes (volume, toxicity) and the universe of PRPs.[5]

This section discusses the major aspects of de minimis settlements, including the determinations that need to be made to define the limits of the de minimis settlement and the parties eligible for participation in it. A discussion of timing issues relevant to settlement at various stages of the remedial process, including RI/FS and RD/RA, is provided. Cost recovery (post-RD/RA) settlements and potential settlements at non-NPL removal sites will also be discussed.

Currently, resources for de minimis settlements are contained within the overall budget allowance of RD/RA negotiations.

As with any negotiation process, adequate planning should provide

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[5]Parties that do not qualify as de minimis are not disqualified from the use of other types of settlement tools or settlement options.

maximum flexibility in the review and/or development of a de minimis proposal.[4]

SITE MANAGEMENT PLAN

The following are suggestions to be incorporated into any site management planning process.

- A timeline for development of the de minimis case strategy.
- Details of PRP search activities required to provide information on candidate PRPs, if necessary, and a description of the resources needed to carry out these additional activities.
- Allocation of shares, including NBAR, if appropriate.
- Any available information on past and future costs relevant to determination of de minimis shares and premiums.
- Communications and information exchange, including information on communications with non-de minimis parties related to potential de minimis settlements.
- A plan for collection of the settlement backup documentation. Additional information on the documentation required for this purpose is under development.

It should be noted that a particular candidate site or individual PRP may change de minimis status at any time during the remedial process with the development of new information for the site.

COMMUNICATION

During general discussions and when the determination is made that a particular site may be a candidate for a de minimis settlement, it is advantageous to communicate to all PRPs the existence of this settlement tool. Any initial contacts with the PRPs, such as a "kick off" informational meeting following the general notice letters, may be used to educate them as to the availability of the different settlement tools, including de minimis.

This opportunity should be used to provide the PRPs with the information necessary to develop an adequate de minimis proposal, including the model settlement documents and de minimis guidance, and a clear understanding of their role in the process.

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[4]As a matter of practicality, the PRPs should be encouraged to take on the burden of the organizational and administrative aspects of the de minimis settlement process.

- De minimis settlement negotiations are expedited when the PRPs organize themselves into steering committees.

- Settlement proposals may be developed by the de minimis and/or the non-de minimis parties. A single proposal representing the de minimis parties' agreement should be developed by the de minimis steering committee. The same holds true when more than one de minimis steering committee exists. In unique circumstances, e.g., varied generator types/information, separate proposals may be accepted by EPA; however, this should be the exception rather than the rule.

- Non-de minimis parties should be informed about any potential de minimis settlement and, in the case of a settlement occurring at the RD/RA negotiation stage of the remedial process, the Region should consider whether the non-de minimis parties should be given the opportunity to incorporate the de minimis settlement into a global remedial settlement.

This communication process will aid the case team in assessing non-de minimis party concerns related to the potential settlement.

TIMING

The determination as to whether or not to pursue a de minimis settlement at a particular point in the Superfund process is dependent upon the case team's knowledge of the site costs.

- In limited circumstances, a removal de minimis settlement may be appropriate for non-time critical removal actions at non-NPL sites. This option would provide parties meeting the characteristics and criteria the opportunity to cashout in the same manner as with a remedial action, except that the covenant would not release the settling parties for any post-removal costs or injunctive relief.

- At the early or mid-RI/FS stage, it is often difficult or impossible to determine with any certainty the remedy for a particular site. These sites are not good candidates for early de minimis settlements.

  However, at a limited number of sites the basic remedy may be relatively easily determined, and a reasonable cost estimate based on past experience or industry estimates may be calculated. These cases may be considered candidates for early de minimis settlements if the other characteristics and

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[7] In general, however, de minimis settlements reached at this point may be too speculative based upon lack of sufficient information to characterize the site.

criteria are met. An example of this type of case is a large landfill where a cap with its components are likely the dictated remedy.

Another exception to this guideline may be the very large multi-generator case where hundreds or more parties with extremely low volumes exist, the toxicities are relatively similar, and a large number of other parties exist. If there are varying toxicities, this factor should be considered in the formulation of a modified volumetric ranking. Any settlement would include a substantial premium for future costs and litigative risks.

- A de minimis proposal is more easily developed at the ROD stage. At this point in time, cost estimates for the remedy are available and realistic premiums may be calculated as discussed below. This is the most common time for a de minimis settlement.

A tiered approach to settlements has been used as an incentive to de minimis parties to join a de minimis settlement at the RD/RA negotiation stage. Under this approach subsequent de minimis proposals include higher premiums.

Example:
- Initial settlement proposal includes 100% premium (i.e., multiplier of 2.0) and minimum reopeners (to be discussed below.)
- Second offering includes a 200% premium (i.e., multiplier of 3.0) with more stringent reopeners (perhaps a reopener for cost overruns.)
- Third offering includes a 300% premium (i.e., multiplier of 4.0) with still more stringent reopeners.

A phased approach may be used in the development of multiple de minimis settlements proposed at different stages of the remedial process where there are multiple PRPs. As multiple negotiations would be required in this scenario, the decision for using this approach should be documented in the site management plan to provide for adequate resource allocation.

Example:
- Early RI/FS de minimis settlement proposed to cashout very low volume contributors constituting 0.7% of the total volume. This eliminates 250 generators from the PRP list prior to the RD/RA negotiation phase and

thereby eliminates the need for special notice letters, meetings, correspondence, etc. with these parties.

- Second de minimis settlement proposed at RD/RA negotiation phase with all remaining eligible parties. This provides settlement with the bulk of the de minimis PRPs.[8]

- Third de minimis settlement proposed at cost recovery stage (post-RD/RA) prior to litigation. This eliminates aspects of the litigation such as discovery, depositions, etc. against de minimis parties thereby reserving resources for pursuit of major party recalcitrants. (If the party declined to participate in an earlier de minimis settlement for which it was eligible, an additional premium should be added to the party's payment.)

o Cost recovery or post-RD/RA de minimis settlements are an option at sites with fund-financed actions or where PRPs are implementing the RD/RA and the government is pursuing recalcitrants for unrecovered costs. This type of settlement may resolve the liability of the parties to the government prior to active litigation thereby allowing the government to concentrate on the non-de minimis party litigation. If a de minimis settlement was offered at the RD/RA negotiation phase of the remedial process, a premium for the cost recovery de minimis settlement may be appropriate because of the parties' earlier recalcitrance.

It is important to note that the primary goals of a de minimis settlement, in most cases, are to get parties out of the case early and eliminate the governmental resource drain of having to deal with a large number of PRPs. Partial de minimis settlements, i.e., those which only extinguish the PRP's liability for past costs or for removal or RI/FS costs, and not for total response actions at the site (e.g. past costs, future response action, etc.) may pose an excessive resource burden on the Agency, and are not the favored approach.

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[8]The terms of early de minimis RI/FS settlements and de minimis settlements reached during the RD/RA negotiation phase may differ based on such factors as additional remedy cost information, additional response costs, and the refusal of certain de minimis parties to join the earlier settlement.

DETERMINATION OF ELIGIBILITY

The following determinations should be made to aid in definition of eligible de minimis parties for a particular site. These determinations are interrelated. This information should be clearly defined in a comprehensive de minimis proposal generally provided by the PRPs.

- The determination of a volumetric or modified volumetric[9] cut-off including a determination that the individual waste contributions of the parties constitute only a minor portion of the total site response costs. This cut-off is established by the waste-in list such that sufficient viable major parties remain to negotiate or litigate for the response actions at the site. Information pertaining to the development of a waste-in list and generator ranking is available in the "Potentially Responsible Part Search Manual," (issued August 28, 1987, OSWER Dir. #9834.3-1A), and in the document, "PRP Search Supplemental Guidance for Sites in the Superfund Remedial Program" (issued June 29, 1989, OSWER Dir. #9834.3-2a).

- A determination of the types of wastes disposed of such that a finding of "minimal in comparison" for toxicity or other hazardous effects can be made. Even if multiple waste types exist at a site this should not be burdensome. As noted above, "minimal in comparison" has been interpreted to mean "not significantly more toxic than". However, where a particular class of wastes drives response costs substantially higher than others, the party that contributed that waste type may be disqualified or a separate allocation formula may be necessary. A decision as to whether or not this holds true of a particular waste should be based on the engineering judgement of the case team.

- A determination that the settlement is practicable and in the public interest.

Example: - Volumetric cut-off established at 0.8%/generator.

- All parties contributed like substances (VOCs).

- The total volume of waste contributed by the parties below the 0.8%/generator cut-off is 16.84%.

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[9]A modified volumetric cut-off may incorporate differing toxicities of hazardous substances contributed by the parties. A non-binding allocation of responsibility, or NBAR, may be useful in developing a modified ranking of PRPs.

- There are sufficient liable and viable parties above the 0.8% cut-off with which to pursue settlement or litigation for the remaining activities at the site.

This example assumes like toxicities for all waste contributions.

NBAR Preparation

When the Agency or PRP determines that they cannot allocate 100% of the costs through other settlement tools, another option is the use of a non-binding allocation of responsibility (NBAR). The purpose of an NBAR is to establish a consistent measure for attributing liability to the PRPs. This process requires assembling and assessing the necessary technical and enforcement information that can support allocation formulas based on volumetric contribution, nature of the waste and response cost.

The development of an NBAR should provide for a fair and equitable allocation of liability at the site among existing PRPs. Allocation of non-viable parties and orphan shares should be adjusted to disperse the liability among the viable PRPs. Additional information on the preparation of an NBAR is available in EPA's "Interim Guidelines for Preparing Nonbinding Preliminary Allocations of Responsibility", (issued May 27, 1987, OSWER Dir. #9839.1, published on May 28, 1987 at 52FR19919).

COSTS

EPA should provide cost information to the PRPs for use in the proposal development. Estimated future remedial costs should be calculated and accurate past cost information and documentation should be available. This cost information is used to develop and allocate shares, including a premium component.

These costs will include both direct and indirect costs (plus interest for past costs) for:

- Pre-RI/FS costs (generally removals)
- RI/FS and ROD
- RD/RA
- Oversight costs
- O&M costs
- Contingency for unknown future costs

PREMIUMS

The purpose of premiums is to cover the risk of underestimating response costs and of not recovering 100% of EPA's outstanding costs from parties not eligible for or not joining in the de minimis settlement.[10] There is no set formula for determining premiums, however, and the case team must rely on sound engineering and legal judgement. The November 17, 1988 "Guidance on Premium Payments in CERCLA Settlements," (OSWER Dir. #9835.6), provides general information on premiums. Premium payments may be calculated on the parties' volumetric shares, as augmented by the distribution of orphan shares to the volumetric shares.

One important consideration is a premium for future costs (this includes all costs that have not been incurred, including cost overruns during performance of RD/RA and costs relating to unknown circumstances). This premium should be based on whether or not a remedy has been selected, the project manager's engineering judgement of potential problems with a selected remedy, potential cost overruns for the project, and where the remedy involves off-site disposal and any risk of off-site disposal liability. This analysis is conducted by the RPM or OSC with input from appropriate technical support personnel. It must be documented. The availability of the information required to determine this premium is critical to the timing of a de minimis settlement.

CALCULATION OF PRP SHARE

- The actual dollar amount of each PRP's share is generally calculated in the following manner. For each generator:

  1. Multiply the generator's percentage (volumetric + redistributed orphan share, including non-viable parties) by the total past costs.

  2. Multiply the generator's percentage (as above with redistributed orphan share added) by total estimated future costs.

  3. Multiply '2' above by the premium. (A percentage premium is equivalent to a multiplier premium, e.g., 40% equals 0.4. A premium of 40% would provide a multiplier of 0.4, 100% would equal 1.0.)

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[10]The future costs include the costs of remediating known conditions, the risk that costs will exceed the expected costs of the cleanup of known conditions, the costs of remediating conditions not known when a remedy is selected, and, if the site will require five year reviews, the uncertainty of changing standards and technologi[illegible].

4. Add '1', '2', and '3' above to arrive at individual generator's cost share.

EXAMPLE

Past Costs = $1,000,000
(removal, RI, FS costs to date, other pre-remedial costs, enforcement activities, indirect costs, and interest)

Future Estimated Costs = $30,000,000
(remaining FS, RD, RA, oversight, O&M, future contingencies)

Premium = 75%
(based on uncertainties including remedy failure, etc.)

	Generator A	Generator B
volumetric share	0.5%	0.9%
orphan share	0.1%	0.2%
total percentage	0.6%	1.1%
past costs (% X cost)	$ 6,000	$ 11,000
future costs (% X cost)	$180,000	$330,000
premium (premium % X future)	$135,000	$247,500
total payment (past + future + premium)	$321,000	$588,500

REOPENERS

In addition to premiums, a variety of reopeners have been used in de minimis settlements. Reopeners allow the government to revisit the settlement according to the particular terms of the reopener. The standard reopeners are briefly summarized as follows.

First, to protect the Agency against the possibility that a de minimis party's full waste contribution to the site has not been discovered, de minimis settlements should include a reservation of rights which allows the government to seek further relief from any settling party if information not known to the government at the time of settlement is discovered which indicates that the volume or toxicity criteria for the sites's de minimis parties is no

longer satisfied with respect to that party.

Second, unless covered by a premium, a reopener should generally be included which protects the Agency against the risk of cost overruns during the completion of the remedial action specified in the ROD. This reopener would generally be written as a cost ceiling, which, if exceeded, would allow the government to seek additional relief from the settling parties.

Third, unless covered by a premium, a reopener should generally be included which protects the Agency from the risk that further response action will be necessary in addition to the work specified in the ROD. This reopener would state that the government may seek further relief from the settling parties if EPA determines, based upon conditions at the site, previously unknown to EPA, or information received, in whole or in part, after [entry of the consent decree/issuance of the AO], that the remedial action is not protective of public health and the environment.

In addition to the de minimis-specific reopeners noted above, de minimis settlements must also include reservations of rights for: 1) any liability as a result of the settling parties' failure to comply with the terms of the settlement; 2) any liability for natural resource damages (unless the Federal natural resource trustee has agreed to a covenant not to sue); 3) criminal liability; 4) any liability for any claim or cause of action not expressly included within the covered matters or within the covenant not to sue; 5) any liability which any non-settling party may have for any claim or cause of action.

SETTLEMENT OPTIONS

The following settlement options are also available when considering a de minimis settlement proposal:

- Alternative settlement offers may be advantageous in providing settlement options to a large variety of PRPs. This option entails the use of 2 similar offerings with the only difference being in the premium and reopener sections. Some PRPs are more willing to cashout at a higher premium to resolve all CERCLA liability, while other parties would rather pay a lower premium and have broader reopeners. Such an offering provides incentive to both "interests" while still satisfying the government's risks. A single or separate settlement documents may be used in this case.

  Example: Offer 1 - premium of 200% with minimum reopeners (i.e., new information on waste contributed to the site, natural resource damages).

  Offer 2 - same document (no premiums if there are full reopeners), with minimum reopeners (i.e. new

information on the waste contributed to the site, natural resource damages) and standard reopeners (i.e., cost overruns during completion of remedial action, and unknown conditions/new information indicating that remedial action is not protective).

- A percentage-based settlement may be agreed upon. In this case, the parties agree to pay a percentage of actual past and future expenditures. This option has not been used to date; however, it is an acceptable settlement tool. Before using this settlement option, however, the Region should consider the financial viability of the settling parties (i.e., will they still exist at the time the delayed payments are due) and the administrative cost to the Agency of sending out multiple billings to many PRPs.

  Example: Settling party agrees to pay their volumetric share plus a 10% premium for future liability. The parties will be billed at the conclusion of RD, and at various stages during the RA. They would also normally make an upfront payment toward past costs.

There are also options available for formalizing the agreement in a settlement document.

- The de minimis settlement may be embodied in a global settlement with the non-de minimis settling PRPs. This agreement would be in a consent decree for the RD/RA. Many times this also provides for the PRPs assumption of future liability for the de minimis parties' share of the work in exchange for receipt of a premium from the de minimis parties. If there is a global settlement where the de minimis settlers provide funds to the major generators, EPA must verify that the de minimis parties satisfy the applicable requirements for de minimis settlements in order to obtain a covenant not to sue under Section 122(g).

  Global settlements should be considered when settling a RD/RA negotiation and a de minimis negotiation simultaneously or within a relatively short period of time. A global settlement is advantageous for several reasons: 1) much of the negotiations occur between the majors and the de minimis parties, saving time and resources; 2) the agreement can, if appropriate, be constructed so that the major PRPs receive a portion of the settlement dollars from the de minimis parties and the money goes directly to the cost of the cleanup; 3) the de minimis PRPs not only get a covenant not to sue, but may also be able to negotiate an indemnification provision or may otherwise be protected from liability by the major PRPs from the governments "reopeners" such as the future liability reopener.

VII. NEGOTIATIONS AND SETTLEMENT

The negotiations required for a de minimis settlement should not be resource intensive. The model consent decree and model order provide useful language for the drafting of a site specific decree or order. Negotiations should involve the entire case team, and the appropriate Headquarters and DOJ personnel should be informed about upcoming negotiations. The June 17, 1988 "Revision of CERCLA Civil Judicial Settlement Authorities Under Delegations 14-13-B and 14-14-E" provides for delegation of Section 122(g)(1)(A) settlements with generators with Headquarters concurrence required for the first case in each Region unless otherwise exempted from delegation by the June 17, 1988 revision (such as settlements which are inconsistent with national policy). Headquarters consultation will be retained for subsequent cases. DOJ approval is required for all de minimis consent decrees and for de minimis administrative consent orders concerning sites at which total past and projected future response costs exceed $500,000, excluding interest. (See §122(g)(4).) If DOJ approval is required, the DOJ staff attorney should be contacted early in the development of the case strategy to allow for DOJ participation in the development of the settlement terms.

The most common document used when finalizing a de minimis settlement separately from an RD/RA settlement is an administrative order on consent.

The settlement may be embodied in a separate, de minimis only, consent decree. This option is generally used when there is ongoing litigation at the site.

In addition to these options, de minimis parties may, if appropriate, be offered the option to join any non-de minimis settlement in lieu of participating in a de minimis settlement.

DISTRIBUTION OF DE MINIMIS MONIES COLLECTED

In most cases, a de minimis settlement is a "cashout". Therefore, the case team must consider the disposition of "cashout" monies. If the "cashout" is a de minimis settlement and is part of a global Section 122 settlement, it may be appropriate to provide the future cost component and its related premium to the parties implementing the response action as provided for in Section 122(g)(5). However, the settlers receiving "cashout" funds must assume the liability of the de minimis parties contributing the monies.

If the non-de minimis parties are not expected to settle or are not settling within a short timeframe, the total settlement dollars will go to the Trust Fund or be divided between the Trust Fund and the state, if the state is a party to the settlement and has a response cost claim.

If the "cashout" includes a past cost component, these monies are to be counted as cost recovery and deposited for credit to the invested portion of the Trust Fund. The future cost component and the premium component may be held in several ways which provide for fund conservation and where possible the accrual of interest on the settlement funds:

1) When immediate fund accessibility is not necessary, the dollars should be deposited for credit to the invested portion of the Trust Fund for later appropriation to the Agency.

2) At State-lead sites, the dollars can be deposited to a state managed escrow account or trust fund, where safeguards exist that ensure that the money will be used for the specific site response.

3) When EPA will be responsible for implementing the response action or will be transferring funds to other settlers and immediate fund accessibility is essential, the dollars should be deposited for credit to the non-invested portion of the Trust Fund. A site specific "special account" will be established.

4) When a global settlement is expected, the dollars may be temporarily deposited to a court managed escrow account for future distribution to major settlers. Court managed accounts should not be utilized for long term funds management.

5) For global settlements reached between de minimis and non-de minimis parties, the dollars can be deposited to an EPA approved but PRP established and managed trust fund or escrow account.

VIII. PURPOSE AND USE OF THIS GUIDANCE

This guidance and any internal procedures adopted for its implementation are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable by law or in equity, by any person. The Agency may take action at variance with this guidance or its internal implementing procedures.

GUIDANCE DOCUMENTS

"Interim Guidelines for Preparing Nonbinding Preliminary Allocations of Responsibility" - (issued May 20, 1987, OSWER Dir. #9839.1 - published on May 28, 1987 at 52FR19919).

"Interim Guidance on Settlements with De Minimis Waste Contributors under Section 122(g) of SARA" - (issued June 19, 1987, OSWER Dir. #9834.7 - published on June 30, 1987 at 52FR24333).

"Interim Model CERCLA Section 122(g)(4) De Minimis Waste Contributor Consent Decree and Administrative Order on Consent" - (issued on October 19, 1987, OSWER Dir. #9834.7-1A - published on November 12, 1987 at 52FR43393).

"Guidance on Premium Payments in CERCLA Settlements" - (issued on November 17, 1988, OSWER Dir. #9835.6 - Porter/Adams).

"Guidance on Landowner Liability under Section 107(a)(1) of CERCLA, De Minimis Settlements under Section 122(g)(1)(B) of CERCLA, and Settlements with Prospective Purchasers of Contaminated Property" - (issued on June 6, 1989, OSWER Dir. #9835.9 - published on August 18, 1989 at 54FR34235).

"Compendium of CERCLA Response Selection Guidance Documents" - OWPE